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SIPDIS

DEPARTMENT FOR EUR/CACEN JMUDGE, EB/TPP/IPE SWILSON, JURBAN,

EB/TPP/BTA/EWH ELUFTMAN
COMMERCE FOR DAS STEWART, CENTRAL ASIA DESK OFFICER DSTARKS
TREASURY FOR CENTRAL ASIA DESK OFFICER MGAERTNER
PLEASE PASS TO USTR KKHUHLMANN

SENSITIVE

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TAGS: [ECON](#) [EFIN](#) [ETRD](#) [EIND](#) [KZ](#) [ECONOMIC](#)

SUBJECT: COMMERCE DAS ERIC STEWART VISITS ASTANA, DISCUSSES
INVESTMENT CLIMATE, IPR, INVESTMENT DISPUTES

REF: (A) 04 ALMATY 5022
(B) ALMATY 304

1. (SBU) Summary: Department of Commerce DAS Eric Stewart (Market Access and Compliance-Europe) visited Astana February 8 and met with several key contacts in Kazakhstani ministries. DAS Stewart told the Kazakhstani officials that, on balance, the economic and trade relationship between the two countries is positive. However, he identified several areas, such as taxation procedures, contract sanctity and respect for arbitration as causes of doubts in the minds of U.S. investors. DAS Stewart also pressed Kazakhstani officials for action to resolve the specific cases of AIG and Flight Director. While positively judging Kazakhstan's progress in improving its IPR environment, he expressed concern about several aspects of Kazakhstan's record on enforcement. End Summary.

2. (SBU) Background: AIG Silk Road, a subsidiary of AIG, is attempting to enforce an arbitral award from the International Center for the Settlement of Investment Disputes (ICSID). The \$10 million dollar judgment arose from the government's expropriation of AIG's interest in an Almaty real estate deal in 1998. AIG recently obtained (protect) a judgment from a British court that it could attach the UK assets of Kazakhstan's National Fund to enforce the award.

3. (SBU) Flight Director is a U.S. company that provided equipment to the now-bankrupt national airline "Air Kazakhstan". The goods provided are valued at about \$160,000. Flight Director was assigned a low priority among creditors at the bankruptcy proceedings, but the government assured the Ambassador (Ref A) that it would at least be able to recover \$45,000 in yet-unused equipment. The company has been unable to do so, and its local attorney has challenged the low priority assigned to its claim. End Background.

4. (U) DAS Stewart met with senior officials at the Ministries of Finance, Industry and Trade, Energy and Mineral Resources and Justice in Astana.

Finance Ministry

5. (SBU) DAS Stewart met at the Ministry of Finance with Vice Minister Aidar Arifkhanov. Arifkhanov's portfolio is mainly the management of government debt. DAS Stewart raised both the AIG and Flight Director cases. On AIG, he offered several of the arguments advanced by the Ambassador in earlier meetings (Ref B) for the government to pay the arbitral award, particularly the effect that publicity over their refusal could have on their bond ratings. Arifkhanov said that the trouble was figuring out who is responsible, the city akimat of Almaty or the national government. He also told DAS Stewart that any payment would come from the Ministry of Justice, which has funds assigned to it for the purpose of paying judgments. While Arifkhanov admitted that AIG was entitled to compensation, he said that the national government would not pay for something the City of Almaty is responsible for.

6. (SBU) With respect to Flight Director, Arifkhanov had little to offer. DAS Stewart told him that not only was the company unable to recover the \$45,000 in equipment that was promised to be returned because of red tape, but also that their lawyers at Baker McKenzie are ready to challenge Flight Director's status as a "fifth line" creditor of Air Kazakhstan. Arifkhanov made no offer to act, but did mention that Air Astana was considering bidding at auction for seven Boeing 757s formerly operated by the now-bankrupt U.S. airline ATA.

17. (U) Finally, DAS Stewart commended the Finance Ministry for its efforts to introduce electronic filing of taxes/government procurement and mentioned that Cisco Systems was interested in pursuing contracts to work on the new system.

Ministry of Industry and Trade

18. (U) DAS Stewart met with Vice Minister Bolat Smagulov and representatives from the Trade and Investment Committees. Smagulov spoke first and cited finalizing the amendments to the law "On Investments" and WTO accession as the Ministry's priorities for this year. He asked DAS Stewart to investigate why certain Kazakhstani exports of metals are subject to high tariffs in the U.S. He cited high tariffs (extra 15) on titanium and very high (243-247) tariffs on steel. Smagulov suggested that Kazakhstan's market economy status should mean that it is not subject to these kinds of defensive measures. DAS Stewart said that to his knowledge all protective tariffs on steel were lifted, but that he would find out if the Kazakhstanis were justified in their complaint.

19. (SBU) DAS Stewart, for his part, praised the Ministry for its work in trying to create a better environment for small and medium enterprises. He again raised both the AIG and Flight Director cases. He said that he has been approached by several large U.S. companies in the telecom, construction and aerospace industries about investing in Kazakhstan, but that situations like AIG make it difficult to present Kazakhstan in a very positive light. Smagulov did not seem very well informed on AIG. However, on Flight Director, he was much more helpful, and offered to broker a meeting in Astana with one of his assistants, Air Kazakhstan, the Customs Committee, the Ministry of Transport and Baker-McKenzie to discuss the issue. Smagulov suggested having the meeting before Feb. 11, when he is leaving on a business trip. (Note: Baker-McKenzie was unable to agree to a meeting so soon because they did not have the client's concurrence. We will attempt to organize the meeting when Smagulov is available. End Note.)

110. (U) Finally, DAS Stewart cited two areas of concern in the bilateral trade relationship: sanctity of contracts and taxation. Smagulov said that Kazakhstani investment laws guarantee stability of contracts and that the concerns of the investor community have been met by the interaction of the President and the Foreign Investors' Council. Stewart suggested that speeding the implementation of electronic filing of taxes would help to improve the investment climate.

111. (U) Smagulov and Stewart agreed in principle to organize an Informal Commercial Exchange (ICE) between top officials from the Ministry and the Department of Commerce.

Ministry of Energy and Mineral Resources

112. (U) DAS Stewart met with Vice Minister Lyazzat Kiinov and spoke about contract sanctity and the investment climate generally. He said that based on his meetings with ChevronTexaco, Conoco Philips and Exxon Mobil, he had the impression that U.S. companies do not regret their investments in Kazakhstan, nor do they intend to leave. However, their concerns about the government's intentions leave them questioning whether to invest more in Kazakhstan. Further, he said that other major companies (Cargill, Caterpillar) have been considering investments in Kazakhstan, and look to the situation of oil companies to predict how they will fare. Stewart also urged Kazakhstan to stay committed to diverse export routes and to move forward on joining BTC and the expanded CPC.

113. (SBU) Kiinov said that he felt the investment climate was very good, especially because President Nazarbayev instituted the Foreign Investors' Council and its oil and gas working group. He said Kazakhstan was the only country in the world where the President maintains this kind of dialogue with the foreign investment community. He defended Kazakhstan's assertiveness and new preemptive legislation by saying that Kazakhstan needed to retain the ability to 1) keep undesirable companies out, and 2) prevent, if

necessary, one or two countries and their companies from buying up too much of Kazakhstan's oil resources. He stated that contracts are inviolable, and no existing contracts will be violated; and that Kazakhstan would certainly yield if it were outbid while trying to preempt the sale of a share.

Ministry of Justice

14. (U) During DAS Stewart's meeting at the Ministry of Justice with Dr. Nurgaysha Sakhipova, Chairperson of the IPR Committee, Sakhipova delivered a long recitation of MOJ's accomplishments in the struggle against piracy and in modernizing Kazakhstan's IPR regime. She cited the ratification of the WIPO Digital Treaties and the amendment to the Copyright Law extending protection to pre-existing works and shared statistics demonstrating far stricter enforcement. She claimed a sixfold increase in the amount of fines collected in administrative proceedings, and about a fourfold increase in the number of people fined (the average fine is about \$40.) She also said that 35 and 29 people, respectively, had been charged with criminal violations of copyrights and trademarks.

15. (U) Sakhipova said the ministry is now pushing Parliament to amend the Criminal Code to make criminal violation of copyrights easier to prove. The amendments would replace the need of the prosecutor to demonstrate "significant harm" to a copyright holder in order to gain a conviction. The amendment would make the question of criminality turn on the amount of pirated material that is seized from the accused. The draft amendment envisions a lower threshold of 500 monthly calculation indexes (about \$3500.) Sakhipova also expressed the hope that Kazakhstan's efforts would be sufficient to merit the country's removal from the Special 301 Watch List.

16. (U) In response to Sakhipova's discussion of MOJ activities, Sakhipova was very complimentary and told Sakhipova that Kazakhstan appeared to be far ahead of other countries in the region in its efforts on IPR protection. However, he also engaged her in a dialogue about the number of convictions and fines that have been handed down as a result of IPR violations. He noted that the aggregate numbers and actual penalties assessed did not appear to be very high.

17. (SBU) Comment. DAS Stewart's meetings with Kazakhstani officials were a much-needed step in deepening cooperation with the GOK on commercial issues, particularly in the areas of market access and commercial dispute resolution. This visit resulted in an agreement in principle to begin an Informal Commercial Exchange (ICE) with the Ministry of Industry and Trade, and was an opportunity to present frankly US concerns about taxation practices, contract sanctity and the investment climate. DAS Stewart pointedly called for action in the AIG and Flight Director cases and - in the case of AIG - made it clear to each Ministry that they all have a vested interest in the government meeting its obligation to pay the award. End comment.

18. (U) DAS Stewart did not have an opportunity to clear this cable.

19. (U) Minimize for Dushanbe considered.

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